

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
SOUTHERN DIVISION

No. 7:15-CR-25-H-1

UNITED STATES OF AMERICA,

v.

TARLESTER GREEN,
Defendant.

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ORDER

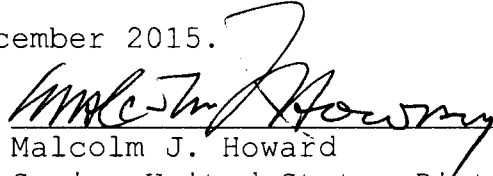
This case is before the court on defendant's motion to dismiss Count Two of the indictment. [D.E. 133]. The government has filed a response, and this matter is ripe for adjudication.

Defendant moves to dismiss Count Two of the indictment charging him with an offense under 18 U.S.C. § 924(c) arising from an underlying Hobbs Act robbery charge in light of the recent Supreme Court decision, Johnson v. United States, ___ U.S. ___, 135 S.Ct. 2551 (2015). Although defendant contends Hobbs Act robbery cannot be considered a crime of violence under 18 U.S.C. § 924(c)(3), this court has previously held Hobbs Act robbery does qualify as a crime of violence under 18 U.S.C. § 924(c)(3)(A) because it "has as an element the use, attempted use, or threatened use of physical force..."¹ See United States v. Evans, No. 5:15-CR-57-H (Oct. 20, 2015).

¹ Recognizing adverse precedent in this court, defendant seeks to preserve his legal challenge to Count Two of the indictment but does not object to this court's disposition of his motion without a hearing.

Finding no new precedent affecting the court's decision regarding this issue, defendant's motion to dismiss Count Two of the indictment, [D.E. # 133], is hereby DENIED for the same reasons set forth in Evans.

This 10th day of December 2015.



Malcolm J. Howard
Senior United States District Judge

At Greenville, NC
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